

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION

FILED  
DAVENPORT, IOWA

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CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA

DEMETTRISS BYRD,

Plaintiff,

vs.

HANSALOY CORPORATION,

Defendant.

Civil No. 3:00-cv-30078

INSTRUCTIONS TO THE JURY

MEMBERS OF THE JURY, THE COURT NOW GIVES YOU THE  
FOLLOWING INSTRUCTIONS:

This is a civil case brought by Demettriss Byrd against the Hansaloy Corporation. Mr. Byrd worked at Hansaloy from June 29, 1994 until he was fired on December 11, 1997. Mr. Byrd alleges that Hansaloy discriminated against him because of his race, retaliated against him for informing defendant about racial harassment in the workplace, and he was subjected to a racially hostile work environment. Hansaloy Corporation denies all of these allegations.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law that I will now give you.

103

INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of the trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed. In considering the instructions, you will attach no importance or significance whatever to the order in which they are given.

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

PAGE TWO OF INSTRUCTION NO. 1

You must follow the instructions now given you regardless of your opinion of what the law ought to be. You need not be concerned with the wisdom of any rule of law.

Finally, as judges of the facts your duty is to decide all fact questions. In doing so, do not be influenced by any personal likes or dislikes, sympathy, bias, prejudice or emotions.

INSTRUCTION NO. 2

You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the Court.
3. Stipulations, which are agreements between the parties. If the parties stipulate to a fact, you should treat that fact as having been proved.

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only exhibits formally offered and received by the court are available to you during your deliberations, and you will be provided with these. Documents or items read from or referred to, which were not offered and received into evidence, are not available to you.

The following are not evidence.

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 2

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence, but if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witness' testimony.

There are many factors you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witness' appearance, conduct, age, intelligence, memory, and knowledge of the facts;
3. The witness' interest in the trial, their motive, candor, bias, and prejudice; and
4. Whether the witness said something different at an earlier time.

INSTRUCTION NO. 4

Certain testimony has been received into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing or on videotape. Consider that testimony as if it had been given in court.

INSTRUCTION NO. 5

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.



INSTRUCTION NO. 6

In these instructions you are told that your verdict depends on whether you find certain facts have been proved.

The burden of proving a fact is upon the party whose claim depends upon that fact. The party who has the burden of proving a fact must prove it by the greater weight or preponderance of the evidence. To prove something by the greater weight or preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable.

The greater weight or preponderance of the evidence is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

INSTRUCTION NO. 7

In this case the plaintiff, Demettriss Byrd, is an individual, and the defendant is a corporation. Each party has equal rights in court. This case should be determined by you with the same fairness and consideration as though it were a case between individuals, and no inference or presumption is to be drawn against the corporation that would be improper in a case between individuals. In addition, this case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. All persons stand equal before the law, and are to be dealt with as equals in a court of law.

INSTRUCTION NO. 8

A corporation acts only through its agents or employees. Any agent or employee of a corporation may bind the corporation by acts and statements made while acting within the scope of the authority delegated to the agent by the corporation, or within the scope of his or her duties as an employee of the corporation.

INSTRUCTION NO. 9

The claims made by plaintiff in this case are under both federal and state law. The federal law is known as Title VII of the Civil Rights Act of 1964. The state law is the Iowa Civil Rights Act. Both provide that it is unlawful for an employer to discriminate against any person because of that person's race and for an employer to retaliate against an employee because the employee engages in protected activity such as complaining about racial harassment.

Plaintiff Demettriss Byrd asserts the following claims against the defendant: (1) discrimination based on race, (2) hostile work environment and (3) retaliation. You will consider each claim separately.

INSTRUCTION NO. 10

On plaintiff's claim of race discrimination, your verdict must be for plaintiff Demettriss Byrd and against defendant Hansaloy Corporation if plaintiff has proved both of the following elements by the preponderance of the evidence:

1. Defendant discharged plaintiff; and
2. Plaintiff's race was a motivating factor in defendant's decision.

If either of the above elements has not been proved by the preponderance of the evidence, your verdict must be for defendant on this claim. If plaintiff has proved both elements, then you will consider the issue stated in Instruction No. 12 with respect to this claim.

INSTRUCTION NO. 11

Plaintiff's race was a "motivating factor" if plaintiff's race played a part in defendant's decision to discharge plaintiff. However, plaintiff's race need not have been the only reason for defendant's decision.

INSTRUCTION NO. 12

If you find in favor of plaintiff under Instruction No. 10, then you must answer the following question in the verdict forms: Has it been proved by the preponderance of the evidence that defendant would have discharged plaintiff regardless of his race? Defendant has the burden to prove this proposition. If you answer "yes," plaintiff cannot recover damages on his race discrimination claim.

INSTRUCTION NO. 13

On plaintiff's claim of hostile work environment, your verdict must be for plaintiff Demettriss Byrd and against defendant Hansaloy Corporation if plaintiff has proved each of the following elements by the preponderance of the evidence:

1. Plaintiff was subjected to racially degrading or intimidating acts, or comments by co-workers;
2. Such conduct was unwelcome;
3. Such conduct was based on plaintiff's race;
4. Such conduct was sufficiently severe or pervasive that a reasonable person in plaintiff's position would find plaintiff's work environment to be hostile or abusive;
5. At the time such conduct occurred and as a result of such conduct, plaintiff believed his work environment to be hostile or abusive;
6. Defendant knew or should have known of the offensive conduct; and
7. Defendant failed to take prompt and appropriate corrective action to end the harassment.



PAGE TWO OF INSTRUCTION NO. 13

If any of the above elements has not been proved by the preponderance of the evidence, your verdict must be for defendant on this claim. If plaintiff has proved all of these elements, then you will consider the issue stated in Instruction No. 16 with respect to this claim.

INSTRUCTION NO. 14

The second element of Instruction No. 13 requires you to determine whether the behavior was unwelcome to plaintiff. You must determine whether the conduct was uninvited and offensive. The conduct must be "unwelcome" in the sense that plaintiff did not solicit or invite it and he regarded the conduct as undesirable or offensive.

The fourth and fifth elements of Instruction No. 13 require you to determine whether the conduct was severe or pervasive enough to create a hostile or abusive environment based on race. The work environment must be shown to be one that a reasonable person would find hostile or abusive, and one Mr. Byrd in fact found to be hostile or abusive based on race.

In considering whether a reasonable person would find the work environment hostile or abusive on the basis of race you must look to the totality of the circumstances. The types of factors you may take into account are the frequency of the conduct, its severity, whether it was physically threatening or humiliating, whether it unreasonably interfered with the plaintiff's job

performance and the effect on plaintiff's psychological well being. This list is not exhaustive, and there is no mathematically precise test. Conduct which amounts to no more than the ordinary tribulations of the work place such as occasional horseplay, sporadic use of abusive language, occasional teasing and off-hand comments does not constitute a hostile or abusive work environment. A plaintiff must generally show that the alleged harassing behavior is sustained and non-trivial; of such a nature and degree as to amount to a material change in the terms and conditions of employment. You should consider all the incidents in combination to determine if a reasonable person would have found there was a hostile or abusive working environment.

INSTRUCTION NO. 15

An employer is liable for racial harassment by its non-supervisory employees (Mr. Byrd's co-workers), if the employer knew, or should have known, of the harassment and did not take prompt, remedial action reasonably calculated to end the harassment. An employer knew of the hostile work environment when management level employees knew, or in the exercise of reasonable care should have known, of the hostile work environment.

When an employer knows of racial harassment, it has a duty to promptly take all necessary reasonable steps to investigate and correct the harassment, including warnings and appropriate discipline, and development of other means to prevent future harassment.

INSTRUCTION NO. 10

Hansaloy Corporation asserts as an affirmative defense to plaintiff's hostile work environment claim that it had policies or practices to prevent or promptly correct racial harassment. To establish this defense Hansaloy must prove by the preponderance of the evidence that (a) defendant Hansaloy exercised reasonable care to prevent and correct promptly any racially harassing behavior; and (b) that plaintiff unreasonably failed to take advantage of the preventive or corrective opportunities provided by Hansaloy.

INSTRUCTION NO. 17

On plaintiff's claim that defendant Hansaloy Corporation retaliated against him for having made complaints about racial harassment, your verdict must be for plaintiff Demettriss Byrd and against defendant Hansaloy Corporation if plaintiff has proved each of the following elements by a preponderance of the evidence:

1. That plaintiff engaged in a statutorily protected activity;
2. That plaintiff received adverse employment action(s);
3. That plaintiff's activity was a motivating factor in the adverse action(s); and
4. Plaintiff was damaged as a result.

If any of these elements has not been proved by a preponderance of the evidence, your verdict must be for defendant on this claim. If plaintiff has proved these elements, then proceed to consider the question of damages.

INSTRUCTION NO. 18

A "statutorily protected activity" means a person has opposed any practice made unlawful by federal or state employment laws. Making a complaint about alleged race discrimination, racial harassment or retaliation is a statutorily protected activity. To establish a "statutorily protected activity" plaintiff does not need to prove that the conduct he complained about was in fact unlawful discrimination, but must show he had a good faith reasonable belief that it was prohibited by the laws against discrimination.

"Adverse employment action" means an action which has serious employment consequences. It includes, but is not limited to, such employment actions as discharge, unfavorable personnel reports, significant reduction in job duties or other actions which adversely affect or undermine an employee's position.

INSTRUCTION NO. 19

Plaintiff's statutorily protected activity was a "motivating factor" for an adverse employment action if the activity played a part in defendant's decision to take the employment action. However, plaintiff's statutorily protected activity need not have been the only reason for defendant's employment action.



INSTRUCTION NO. 20

You may not return a verdict for plaintiff just because you might disagree with defendant's decisions or policies, or believe them to be harsh or unreasonable. An employer is entitled to make its own subjective personnel decisions and can make employment decisions for any reason that does not violate the law concerning employment discrimination.

INSTRUCTION NO. 21

If you find in favor of plaintiff Demettriss Byrd under any of his claims, then you must award plaintiff such sum as you find by the preponderance of the evidence will fairly and justly compensate him for any damages you find he sustained as a direct result of the defendant's actions. You shall consider the following types of damages separately:

1. Wages and benefits plaintiff would have earned in his employment with defendant if his employment had not ceased on December 11, 1997, through the date of your verdict, minus the amount of earnings that plaintiff received from other employment during that time. This is called "back pay." You may only award back pay if you have found in favor of plaintiff with respect to his claim of race discrimination or retaliation.

2. The reasonable cost of therapy and counseling services in the future.

3. Mental or emotional pain and suffering in the past and future. Mental or emotional pain and suffering may include, but is not limited to, mental anguish, loss of enjoyment of life, humiliation and embarrassment.

The amount, if any, you award for past and future mental or emotional pain and suffering cannot be measured by an exact or mathematical standard; the determination of the amount must rest in the sound discretion of the jury. Such discretion must not be exercised arbitrarily or out of passion or sympathy or prejudice for or against the parties or to punish, but must be based on a fair, intelligent, dispassionate and impartial consideration of the evidence. The amount you assess for any item of damage must not exceed the amount caused by the defendant as proved by the evidence.

A party cannot recover duplicate damages. Do not allow amounts awarded under one item of damage to be included in any amount awarded under another item of damage. The amounts, if any, you find for each of the above items will be used to answer the special verdicts.

INSTRUCTION NO. 22

Mr. Byrd has a duty to mitigate or lessen his damages. That is, Mr. Byrd was required to exercise reasonable diligence to locate other suitable employment after he was discharged by Hansaloy Corporation and to maintain suitable employment once located. If you find that Hansaloy is liable and that Mr. Byrd has suffered damages, then Mr. Byrd may not recover back pay or other benefits for any period of time during which he failed to exercise reasonable diligence to locate and maintain other suitable employment after he was discharged by Hansaloy. Hansaloy has the burden of proving Mr. Byrd failed to mitigate his damages.

INSTRUCTION NO. 23

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to an item of damage and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO. 24

Your first duty on retiring to the jury room for your deliberations is to elect one of your members foreperson of the jury. The person elected is responsible for the orderly, proper and free discussion of the issues by any jurors who wish to express their views. The foreperson will supervise the balloting and sign the verdict form and any written inquiries addressed to the Court.

Requests regarding instructions are not encouraged. Experience teaches that questions regarding the law are normally covered in the instructions, and the jury is encouraged to examine them very carefully before making any further requests of the Court.

The attitude of jurors at the outset of their deliberations is important. It is seldom helpful for a juror, upon entering the jury room, to announce an emphatic opinion in a case or a determination to stand for a certain verdict. When a juror does that at the outset, individual pride may become involved, and the juror may later hesitate to recede from an announced position even when it is incorrect. You are not partisans or advocates. You are judges--judges of the facts. Your sole interest is to ascertain the truth.

INSTRUCTION NO. 25

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous.

As jurors, your duty is to consult one another and deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. An inconclusive trial is always undesirable. Each of you must decide the case for yourself, but only after an impartial consideration of evidence with your fellow jurors. During your deliberations, do not hesitate to re-examine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Submitted to you with these instructions is the special verdict form. After you have agreed and appropriately signed the verdict form in accordance with the directions contained therein, inform the jury officer outside the room. You will have the verdict signed only by one of your number whom you will have selected as your foreperson and return with it into court.

Dated this 4th day of February, 2002.

  
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ROSS A. WALTERS  
CHIEF UNITED STATES MAGISTRATE JUDGE